

From: Andrew Suchy
To: Microsoft ATR
Date: 1/1/02 4:19pm
Subject: Microsoft Settlement

To Department of Justice Staff,

I have read the posted court documents related to US vs. Microsoft, and would like an opportunity to comment. While I do not have training in law, I am an active software developer, and have seen the industry evolve for the past 12 years. With all due respect to the legal minds that have worked to find remedies for Microsoft's antitrust violations and anti competitive conduct, I deem the measures grossly insufficient.

I do not wish to reiterate any points already covered in the document, it is sufficient to say that I have seen first hand some of the complaints raised by the plaintiff, and seen the devastating effect on competition and innovation. Instead, I would like to point out why some of the remedies will not work, and bring to your attention how Microsoft continues anti competitive behavior even today. First the remedies:

a.. The requirement that Non-Microsoft Middleware have at least one million copies distributed before it is considered "competition" is ridiculous. In the software business, one needs to have access to the API's in order to deliver a competitive product. This is a chicken and egg problem: one can't get to one million copies without having technical details (such as Section III.D) and the ability to replace Microsoft Middleware free of restrictions.

b.. Regarding Microsoft's restrictions on subsection III.C.3 which require that Non-Microsoft Middleware activated during the boot sequence look and behave the same way as Microsoft Middleware, this clearly favors Microsoft. If a competitor cannot distinguish itself by the way its software appears on the screen, or behaves during operation, than it is doomed. Why would anyone load (or buy) software that looks just like Microsoft's, when Microsoft's version is already included in the OS? This restriction must have been dreamed up by Microsoft's marketing department.

c.. The remedies regarding Middleware can easily be avoided by Microsoft, by simply moving functionality into the greater "OS". Any feature can be hidden from competitors by putting the functionality into proprietary operating system components (otherwise known as libraries).

The remedies are so full of holes, no software developer can take them seriously. There are other concerns not already addressed by the court papers, as well:

a.. There is no remedy for the hundreds or thousands of businesses already killed by predatory behavior,

b.. There is no remedy for standards subversion. In the computer industry, standards for communication protocols, application protocols, and internet protocols (just to name a few) are made up by representatives of the industry in committees. Undue influence from a giant like Microsoft is unavoidable. The attempted subversion of Java is one example, the introduction of the C# (pronounced C sharp) programming language is another (because software development tools are also monopolized by Microsoft - not a well publicized fact). There are also internet protocols at stake, where interoperability of software is prevented by diverging from established standards (or evolving standards). Doing this guarantees Microsoft that competing products will not work, and lets Microsoft dictate the protocol.

c.. There is no remedy for other software getting "tied" to the operating system. A good example is the dispute between Microsoft and Kodak over digital photography software included in Windows XP. CD writing (CD-R) software is another recent addition. In fact, Microsoft continues to kill competition by including software that has nothing to do with the operating system. As an analogy, would any of us feel comfortable if the power company started to include all the electric appliances we needed, along with the

electricity it sells us? Soon, GE, Maytag, etc. would all be out of business, and we would have nowhere else to go get a refrigerator but the power company. It doesn't sound like the world I want to live in. None of the remedies in the settlement deal with this problem.

I hope my comments are constructive and help bring about a settlement more effective than the current one.

Sincerely,
Andrew P. Suchy

CC: asuchy@cyberinnovate.com@inetgw